

## COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1670.00  
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes  
DATE OF COMPLAINT: December 27, 2000  
DATE OF REPORT: January 25, 2001  
REQUEST FOR RECONSIDERATION: yes  
DATE OF CLOSURE: February 23, 2001

## COMPLAINT ISSUES:

Whether the North Montgomery Community School Corporation and the West Central Indiana Special Services Cooperative violated:

511 IAC 7-29-1(e) with regard to the school's alleged failure to provide special education services to a student with a disability who was suspended and required to attend the out-of-school suspension and expulsion program when the school provides educational services to students without disabilities who have been similarly suspended and required to attend the MOSS program.

## FINDINGS OF FACT:

1. The student (the "Student") is a sophomore at the local high school (the "School") and is eligible for special education and related services as a student with a learning disability ("LD"). The Student's *IEP* states that the Student participates in all general education activities, services, classes, and curriculum except for LD language arts which uses a modified curriculum.
2. On October 3, 2000, the Student was found in possession of tobacco and was suspended from School for three days beginning on October 5, 2000.
3. The School initiated proceedings against the Student under the MOSS program.
4. The written description of the MOSS program states that the local county prosecutor's office (the "Prosecutor") and the local circuit court (the "Court") have a history and practice of assisting the local school corporation (the "Corporation") to curb problems with student discipline and attendance. By using the statutes relating to a child in need of services ("CHINS") the Prosecutor and the Court get a student and parent to realize the need to rectify problem behavior.
5. There are six objectives and goals listed in the MOSS program description. Number two states, "Provide an out-of-school suspension and expulsion environment that is supervised and constructive."
6. The *Suspension Procedure* included in the MOSS program description states that it has been planned and organized with the cooperation of the Prosecutor. Number 5 listed in the *Suspension Procedure* states, "A student will be expected to have obtained any assignments and to have completed those assignments upon returning to school. The amount of credit earned for work completed by a student while on suspension will be determined by the policy of the student's school. **Each student is to take the necessary books so that assignments can be completed.**"
7. One of the MOSS program student rules states, "You are expected to have all of your schoolbooks

with you and any assignments given to you prior to leaving the school. Failure to do so will be reported to your school. The director (of MOSS program) will find schoolwork for you to do if you fail to bring anything. Other assignments may be dropped off or faxed to us by your school.” The student rules conclude with, **“YOUR PERFORMANCE AS RELATES TO COMPLETION OF SCHOOL WORK, BEHAVIOR AND ATTITUDE, COMPLIANCE WITH RULES WILL BE REPORTED BACK TO YOUR SCHOOL, WHERE THERE MAY BE CONSEQUENCES IF FAIL TO MEET THEIR EXPECTATIONS.”**

8. A Conduct Evaluation to be completed by the MOSS program's director includes the following questions regarding a student's behavior. “Has materials: homework, pen/pencil, paper, text, worksheets, etc.?” and “Cooperates with instructor?”
9. The hours of the MOSS program are from between 7:30 a.m. and 7:45 a.m. to between 2:45 p.m. and 3:00 p.m. None of the MOSS program information mentions the provision of special education services to students who are identified as in need of said services.
10. The Court ordered the Student to serve a three-day suspension at the MOSS program during the hours that the Student normally attended the School. The Student returned to the School after serving three days in the MOSS program.
11. The local director of special education (the “Director”) reported that the School followed regular discipline policy regarding the Student's infraction, which is the MOSS program, and that the three days were counted the same as a suspension for any student. The Director also stated that the primary focus of the MOSS program is to provide a supervised environment for students who are suspended. The Director concluded that the Student was only suspended for three days and the School was “not required to provide services to a student with a disability during any of the first ten (10) cumulative instructional days of suspension if services are not provided to a nondisabled student who has been similarly suspended.”
12. The principal (the “Principal”) of the School reported that the MOSS program provides a structured and supervised environment for students when they are suspended so that students do not sit at home unattended with the potential for getting into further trouble. It is not an alternative educational setting. There is a supervisor, not a teacher, and there is no instruction provided to students in attendance. Students either bring their own books and work on assignments or the MOSS program provides educational packets for the students to work on during the course of their suspensions. The School provides the MOSS program with the educational packets.

#### **CONCLUSION:**

Findings of Fact #2, #3, #10 and #11 indicate that the Student was suspended in accordance with School discipline policy and that the Student served three days in the MOSS program. Findings of Fact #11 and #12 indicate that the primary focus of the MOSS program is to provide a supervised environment for students who are suspended. The School has no obligation to provide educational services to students with disabilities who are suspended for fewer than ten cumulative instructional days if services are not provided to nondisabled students. Although Findings of Fact #6, #7 #8, and #9 indicate that students who are suspended from the School are to bring their own books and assignments to the MOSS program, Findings of Fact #4, #5, #11, and #12 indicate that the MOSS program is in place to provide a supervised and structured environment for suspended students so that they have no further opportunities to get into trouble during a suspension period. Further, the Findings indicate that no instruction is provided to any student attending the MOSS program. No violation of 511 IAC 7-29-1(e) occurred.

**The Department of Education, Division of Special Education requires no corrective action based on the Findings of Fact and Conclusions listed above.**